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C.M.A.No.1373 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 08.04.2022

C O R A M :

The Hon'ble Mrs. Justice **J. NISHA BANU**

C.M.A.No.1373 of 2013

S.Soorya (Minor)

rep. By his mother and natural guardian

S.Kuppammal

..Appellant/Petitioner

Vs

1.G.Murugan

2.Reliance General Insurance Co.Ltd.,

6th floor, 6, Haddows Road

Nungambakkam, Chennai-34

..Respondents/Respondents

PRAYER : CMA filed under Section 173 of Motor Vehicles Act, 1988, against the Award dated 03.01.2013 in MCOP.No.2297 of 2011 on the file of Motor Accidents Claims Tribunal/V Judge, Court of Small Causes, Chennai.



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For Appellant : Ms.Ramya V.Rao
For Respondents : Mrs.C.Bhuvaneswari for R2.

R1-Notice served.

JUDGMENT

This appeal is filed by the injured claimant as appellant seeking enhancement of compensation.

2. The appellant was aged six years at the time of accident. In the accident that occurred on 16.07.2010, he sustained fracture of two bones in right leg, lacerated wound at right thigh and left thigh. The appellant represented by his mother claimed Rs.10 lakhs for the injuries caused to him. The Tribunal, after analysing the entire evidence, found that the gravity of injury on the minor petitioner would definitely affect his future and he cannot mingle with other children, therefore, award towards mental shock, agony and future medical expenses towards disfigurement is necessitated. Thus awarded Rs.1,88,738/- under various



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heads as under:-

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Transport to Hospital	: Rs.10,000.00
Extra nourishment	: Rs. 10,000.00
Medical bills	: Rs. 3,738.00
Mental shock and agony	: Rs. 30,000.00
future social status	
Attender charges	: Rs. 3,000.00
Pain and suffering	: Rs. 30,000.00
Disfigurement and	
medical expenses in future	: Rs.30,000.00
Disability at 45% at	
Rs.1600/- per percentage	:Rs.72,000.00
Total	:Rs.1,88,738.00

3. The learned counsel for the appellant submits that due to the injuries sustained in the accident, the appellant underwent surgery and skin grafting. He suffered 60% disability as per Ex.P.9 disability certificate issued by P.W.2 doctor. However, tribunal taken the disability



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at 45%. The learned counsel relied on decision reported in **2013 (2)**

TNMAC 338 (SC) [Master Mallikarjun Vs. Divisional Manager, National Insurance Company Limited and another] and submitted that as per the settled dictum, the compensation awarded should enable the child to acquire something or to develop a lifestyle which will offset to some extent the inconvenience and discomfort arising out of the disability. The learned counsel therefore sought for enhancement of compensation to the appellant.

4. Per contra, learned counsel appearing for the 2nd respondent/insurance company submits that the award passed by the Tribunal is perfectly in order and needs no interference by this court.

5. Heard both sides and perused the Award.

6. It is the case of the appellant that he was aged 6 years at the time of accident that occurred on 16.07.2010. P.W.2 doctor assessed disability of 60% and issued Ex.P.9 disability certificate. However, the



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tribunal taken the disability only as 45% holding that the the doctor has not given treatment to the injured and he has not given the measurement of the shortening of the leg. The learned Judge, Tribunal, considering the fracture, disfigurement and shortening of leg, fixed the disability at 45% and determined Rs.1600/- per percentage of disability and awarded compensation towards “Disability” as Rs.72,000/- (45% x Rs.1600/-), which this Court finds just and proper and hence, the same is confirmed.

7. Considering the age, nature of injuries sustained in the accident, a just and reasonable compensation is to be given towards “pain and suffering”. Accordingly Rs.1,00,000/- is awarded under the head “Pain and suffering” instead of Rs.30,000/- granted by the Tribunal. As far as other heads are concerned, the compensation granted by the Tribunal is found to be just and reasonable and stands confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:-

Heads of Compensation	Amount awarded by the Tribunal (Rs.)	Amount awarded by this court (Rs.)	Modification confirmed/enhanced
Transport to	Rs. 10,000	Rs. 10,000	confirmed



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Heads of Compensation	Amount awarded by the Tribunal (Rs.)	Amount awarded by this court (Rs.)	Modification confirmed/enhanced
Hospital			
Extra nourishment	Rs. 10,000	Rs.10,000	confirmed
Medical expenses	Rs. 3,738	Rs. 3,738	confirmed
Mental shock and agony and future social status	Rs. 30,000	Rs.30,000	confirmed
Attender charges	Rs. 3,000	Rs. 3,000	confirmed
Pain and suffering	Rs. 30,000	Rs.1,00,000	enhanced
Disfigurement, medical expenses in future	Rs. 30,000	Rs.30,000	confirmed
Disability (Rs.1600/- x 45 %)	Rs. 72,000	Rs.72,000	confirmed
Total	Rs.1,88,738/-	Rs.2,58,738/-	enhanced

8. In the result, this Civil Miscellaneous Appeal is partly allowed. The compensation awarded by the Tribunal is enhanced to **Rs.2,58,738/-** from Rs.1,88,738/-. The award amount will carry interest at the rate of 7.5% per annum from the date of filing of claim petition till the date of realisation. The 2nd respondent/Insurance company is directed to deposit the enhanced award



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amount now determined by this court along with interest and cost, less the amount already deposited, if any, within a period of eight weeks

from the date of receipt of a copy of this judgment. On such deposit, the Tribunal shall deposit the same in a Nationalised Bank in Fixed Deposit till the appellant attains the age of majority. Interest accrued in the Fixed Deposit account shall be withdrawn by the mother of the appellant, once in three months, directly from the Bank. On attaining majority, the appellant is entitled to withdraw the same along with accrued interest and costs. No costs.

08.04.2022

Index :Yes/No
Internet :Yes/No
nvsri/vrc

To

- 1.The V Judge, Motor Accidents Claims Tribunal
Court of Small Causes, Chennai.
- 2.The Section Officer, V.R.Section, High Court, Madras.



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